S • me Court, U.S.
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No. 98-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

GWENDOLYN PORTWOOD, JANE SHERRY, LARRY A. GROSE, WARREN D. WEISS, AND JOHN M. YOGER, on behalf of themselves and classes of all others similarly situated,

Petitioners,

v.

FORD MOTOR COMPANY,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW[1]

Where a class action asserting a federal cause of action was originally and timely filed in federal court, as authorized by federal statute, and was later dismissed by the federal district court for lack of jurisdiction and then refiled in state court, did the Illinois Supreme Court violate the Supremacy Clause by rejecting cross-jurisdictional class action tolling of the statute of limitations for the refiled Illinois class action, when Illinois law allows such *American Pipe/Crown Cork* tolling for class actions originally filed in Illinois state courts,[2] but has now rejected such tolling if the federally created class action cause of action was originally filed in a federal district court, a discrimination against federal law prohibited by the holding of *Howlett v. Rose*, 496 U.S. 356 (1990), that state courts must entertain no less jurisdiction for federal causes of action as for state law claims. The lower court's ruling in *Portwood v. Ford Motor Co.*, 701 N.E.2d 1102 (Ill. 1998) (attached as App. A), violates the *Howlett* rule.

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[1] Sup. Ct. R. 14(1)(a).

[2] The federal class action tolling doctrine is spelled out in *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983); *American Pipe & Constr. Co. v. Utah*, 414 U.S. 540 (1974), which the Illinois Supreme Court followed in *Steinberg v. Chicago Medical School*, 371 N.E.2d 634, 645 (1977).

PARTIES

The Petitioners in this case are Gwendolyn Portwood, Jane Sherry, Larry A. Grose, Warren D. Weiss, and John M. Yoger, all of whom owned 1976-1979 model year Ford motor vehicles that experienced "park-to-reverse" incidents that caused property damage and were absent class members in the original *Walsh* federal class action, as well as in the directly underlying *Portwood* action, from which they appeal. Petitioners are unaware of any "parent companies", as referenced in Sup. Ct. R. 14(1)(b), since petitioners are all ordinary consumers who purchased Ford motor vehicles.

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(A) Decision of the Illinois Supreme Court rejecting cross-Jurisdictional class action tolling and thus finding the claims of absent class members in the original federal class action time-barred in Illinois state court. *Portwood v. Ford Motor Co.*, 701 N.E.2d 1102 (Ill. Oct. 1, 1998) A-1

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OPINIONS BELOW

This is a case timely filed originally on August 21, 1981 by plaintiffs (and others) against defendant Ford Motor Company, alleging that Ford was liable for the property damages caused when "park-to-reverse" incidents occurred. *See, e.g., Walsh v. Ford Motor Co.*, 588 F. Supp. 1513 (D.D.C. 1984); 616 F. Supp. 1170 (D.D.C. 1985) (denying motion to dismiss on time-bar grounds due to plaintiffs' fraudulent concealment allegations); 106 F.R.D. 378 (D.D.C. 1985) (certifying nationwide classes); 807 F.2d 1000 (D.C. Cir. 1986) (vacating and remanding class certification order for further reconsideration of predominance issues); 130 F.R.D. 260 (D.D.C. 1990); 130 F.R.D. 542 (D.D.C. May 14, 1990) (dismissing action for lack of federal jurisdiction); 945 F.2d 1188 (D.C. Cir. 1991) (dismissing appeal on technical pleading deficiency).

Subsequently, on May 14, 1991, exactly one year after the *Walsh* dismissal for lack of federal jurisdiction, some of the original *Walsh* named plaintiffs, plus five others who were not named *Walsh* plaintiffs, but were absent members of the property damage class asserted there, refiled their claims in Illinois state court in *Portwood v. Ford Motor Co.*, No. 91 CH 4442 (Ill. Cir. Ct. Cook Co., filed May 14, 1991). These five absent class members, who are the only petitioners here, alleged that as of their May 14, 1991 Illinois refiling, they still had time left on their four-year UCC § 2-725 statute of limitations period, as tolled by fraudulent concealment allegations earlier and by *American Pipe/Crown Cork* class action tolling in *Walsh* since 1981.

The Illinois Supreme Court in *Portwood v. Ford Motor Co.*, 701 N.E.2d 1102 (Ill. Oct. 1, 1998), held to the contrary—that cross-jurisdictional class action tolling did not apply because the original class action was filed in federal district court and the successor class action was filed in Illinois state court.

JURISDICTION

Jurisdiction is based on 28 U.S.C. § 1257 and Sup. Ct. R. 10(b) and/or (c). The Illinois Supreme Court below issued its decision on October 1, 1998. An extension of the time period for filing this certiorari petition was granted by this Court until January 27, 1999.

CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS INVOLVED

The Magnuson-Moss Consumer Product Warranty Act, 15 U.S.C. § 2301 *et. seq.* (1975), provides in § 2310(d)(1):

> a consumer who is damaged by the failure of a supplier ... [or] warrantor ... to comply with any obligation under ... a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief—
> (A) in any court of competent jurisdiction in any State or the District of Columbia; or
> (B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

This is the *Walsh* case that petitioners originally brought in federal district court under § 2310(d)(1)(B) because they satisfied the 100 named plaintiffs requirement for a federal court class action, as set forth in 15 U.S.C. § 2310(d)(3):

> No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection—...
> (C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

Article VI of the United States Constitution (the "Supremacy Clause") provides that "the Laws of the United States ... shall be the Supreme Law of the Land; and the

Judges in every State shall be bound thereby, any Thing in the ... Laws of any State to the Contrary notwithstanding."

STATEMENT OF THE CASE

The predecessor to this Illinois state court class action was a federal court class action, *Walsh v. Ford Motor Co.*, No. 81-1991 (D.D.C., filed Aug. 21, 1981). The over 100 *Walsh* named plaintiffs were owners of 1976-1979 model year Ford vehicles that experienced "park-to-reverse" incidents resulting in property damage. These incidents occur after the driver reasonably perceives that he has placed the gear selector lever in the secure "park" position—i.e., the vehicle stops moving. But after the driver has exited the vehicle (often with the engine still running) it suddenly jumps into reverse and moves backward, striking objects (and sometimes persons) in its path and causing property damage.

The *Walsh* plaintiffs alleged that these incidents, numbering in the tens or hundreds of thousands, occurred many times more frequently in Fords than in non-Fords and were due to Ford design defects which induced drivers to leave the gear selector lever in the "false park" instead of the "secure park" position. Plaintiffs sued Ford for breach of written warranty (for incidents occurring during the 12,000 mile warranty period) and for breach of the UCC § 2-314(2)(c) "fit for the ordinary purposes" implied warranty of merchantability under the Magnuson-Moss Consumer Product Warranty Act, 15 U.S.C. § 2310(d))(1)(B).

As further described in the Opinions Below section, *supra* at 1, *Walsh* was eventually dismissed for lack of federal jurisdiction. *Walsh v. Ford Motor Co.*, 130 F.R.D. 542 (D.D.C. May 14, 1990). A year later the *Portwood* class action was filed in the Illinois Circuit Court for Cook County. There were 52 named plaintiffs in *Portwood*, 47 of whom were named plaintiffs in *Walsh* and five of whom (the

petitioners here) were absent members of the subclasses proposed in *Walsh*.[1]

For the timeliness of their claims, the 47 former *Walsh* named plaintiffs invoked the Illinois "savings statute", 735 ILCS ¶ 5/13-217 (West 1996), which provides a one year grace period for refiling claims dismissed by a federal district court for lack of jurisdiction. However, the Illinois courts eventually ruled that the six month grace period of UCC § 2-725(3) for contract actions applied instead of the more general one year savings statute, so that the claims of the 47 former *Walsh* plaintiffs were time-barred. App. A at 7-10. Since that ruling does not raise a federal question, those plaintiffs are not petitioners here.

For the timeliness of their claims, the five *Walsh* absent class member plaintiffs relied not on a state statutory savings provision but on the federal class action pendency tolling doctrine developed in *American Pipe & Construction Co. v. Utah*, 414 U.S. 540 (1974), and *Crown Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983), which the Illinois courts had followed in *Steinberg v. Chicago Medical School*, 371 N.E.2d 634, 645 (1977). These plaintiffs argued that *Walsh* class pendency tolling from August 21, 1981 until May 14, 1990, coupled with the *Walsh* ruling that Ford's fraudulent concealment further suspended the running of the limitations period for part of the time prior to the August 21, 1981 class filing,[2] still left sufficient time on the applicable four year UCC § 2-725 limitations period when their claims were refiled in *Portwood* on May 14, 1991.

Affirming the decisions of the trial court and the Illinois Court of Appeals (*see* App. A at 2), the Illinois Supreme Court held that *American Pipe/Crown, Cork* class tolling does

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[1] This background is further described in *Portwood v. Ford Motor Co.*, 701 N.E.2d 1102, 1103 (Ill. 1998), App. A at 1-2.

[2] *See Walsh v. Ford Motor Co.*, 588 F. Supp. 1513, 1521-1523 (D.D.C. 1984); *Walsh v. Ford Motor Co.*, 616 F. Supp. 1170 (D.D.C. 1985).

not apply cross-jurisdictionally to a class action originally filed in federal court and then refiled in Illinois state court. *Portwood v. Ford Motor Co.*, 701 N.E.2d 1102, 1103-1105 (Ill. Oct. 1, 1998) (App. A at 3-7). Although recognizing that *Steinberg* had adopted the *American Pipe/Crown, Cork* tolling doctrine "for class actions filed in Illinois state court", *Portwood* held:

> Tolling a state statute of limitations during the pendency of a federal class action, however, may actually increase the burden on that state's court system, because plaintiffs from across the country may elect to file a subsequent suit in that state solely to take advantage of the generous tolling rule. Unless all states simultaneously adopt the rule of cross-jurisdictional class action tolling, any state which independently does so will invite into its courts a disproportionate share of suits which the federal courts have refused to certify as class actions after the statute of limitations has run.

App. A at 5. The court noted that decisions were split as to whether cross-jurisdictional class tolling is recognized, citing as the supposed majority rule a handful of mass tort personal injury cases refusing to recognize cross-jurisdictional class tolling. App. A at 5-6.[3] But unlike this case none of those cases involved *federal* causes of action.

The *Portwood* decision was rendered on October 1, 1998. On December 23, 1998 this Court per Mr. Justice Stevens

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[3] Those decisions were equally concerned that broad personal injury class allegations did not put the defendant on sufficiently specific notice of the claims as required by *American Pipe/Crown, Cork* or were inherently uncertifiable class actions. For example, *In re Agent Orange Product Liability Litigation*, 818 F.2d 120, 123 (2d Cir. 1987), actually involved claims that were not included in the original class action. But that is not the issue here.

extended the time for filing this Petition until January 27, 1999. App. B.

REASON FOR GRANTING THE WRIT

The Magnuson-Moss Act, though borrowing the definition of an implied warranty from state law (15 U.S.C. § 2301(7)), creates a *federal* private cause of action for breach of warranties on "consumer products". 15 U.S.C. §§ 2301(1) & (3), 2310(d)(1). The Act also imposes federal standards for manufacturers' attempted disclaimers or durational limitations of implied warranties (15 U.S.C. §§ 2308(a) & (b)) and imposes those standards on state law (i.e., UCC § 2-316) where "consumer products" are involved. 15 U.S.C. § 2308(c). The Act further provides that private damage actions may be brought in either state court or, if certain requirements are met, in federal court. 15 U.S.C. §§ 2310(d)(1)(A) & (B). *See supra* at 2.

The Illinois Supreme Court's refusal to recognize cross-jurisdictional class tolling for this federal cause of action, while affording such tolling to class actions filed in Illinois state courts, is directly at odds with this Court's decision in *Howlett v. Rose*, 496 U.S. 356, 110 S. Ct. 2430 (1990). In *Howlett* the Florida state courts had refused to entertain a federal civil rights cause of action filed under 42 U.S.C. § 1983, although Florida courts did entertain similar state law actions against state defendants. This Court held that such discrimination against plaintiffs asserting federal causes of action violated the Supremacy Clause.

Here as well the Illinois courts, which in *Steinberg* recognized *American Pipe/Crown, Cork* class tolling for class actions filed in state court, have discriminated against this federal Magnuson-Moss cause of action by not allowing cross-jurisdictional class tolling if the class action is originally filed in federal court, as is authorized by federal law.

The Illinois Supreme Court's exclusionary rationale that by allowing cross-jurisdictional class tolling, its state court

system would somehow be swamped "by plaintiffs from across the country" is no more basis for failing to give equal access to federal causes of action than it was in *Howlett*. Moreover, if this Court applies *Howlett* and holds that *all* states must allow cross-jurisdictional tolling for federal causes of action, there is no reason to believe that Illinois courts would be selected by plaintiffs any more disproportionately than the courts of other states.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: January 27, 1999

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APPENDIX

701 N.E.2d 1102
183 Ill. 2d 459, 233 Ill. Dec. 828
(Cite as: 701 N.E.2d 1102)

Gwendolyn PORTWOOD et al., Appellants,
v.
FORD MOTOR COMPANY, Appellee,

No. 84488,

Supreme Court of Illinois,

Oct. 1, 1998

Justice HEIPLE delivered the opinion to the court:

Gwendolyn Portwood and 51 other plaintiffs appeal the following holdings of the circuit and appellate courts: (1) the filing in federal court of a complaint seeking certification of a class action does not toll, or suspend, the Illinois statute of limitations during the pendency of that complaint; and (2) plaintiffs whose breach of warranty claims are dismissed by a federal court for lack of jurisdiction have six months to refile those claims in Illinois state court. We affirm both holdings.

BACKGROUND

On August 21, 1981, a group of plaintiffs filed a complaint in United States District Court for the District of Columbia seeking certification of a nationwide class action against defendant Ford Motor Company. The complaint alleged that thousands of people who purchased Ford automobiles between 1976 and 1979 sustained property damage as a result of collisions which occurred when the vehicles' transmissions shifted from "park" to "reverse" without warning. The district court initially certified a class

action, but was reversed on appeal. Walsh v. Ford Motor Co., 807 F.2d 1000 (D.C.Cir. 1986). On remand, the district court found class certification unwarranted, and also dismissed *1103 the plaintiffs' individual claims for lack of federal jurisdiction. Walsh v. Ford Motor Co., 130 F.R.D. 260 (D.D.C. 1990). The district court denied reconsideration on May 14, 1990.

On May 14, 1991, plaintiffs filed this action in the circuit court of Cook County seeking certification of a nationwide class similar to that sought in Walsh. Of the named plaintiffs in the instant case, 47 were also named as plaintiffs in Walsh; the other five were unnamed members of the potential Walsh class.

The circuit court granted defendant's motion to dismiss the complaint as untimely. The court ruled that the statute of limitations for bringing suit in Illinois was not tolled, or suspended, by the filing in federal court of the Walsh class action complaint, and hence the claims of the five plaintiffs not named in Walsh were untimely. The court also ruled that under section 2-725 of the Uniform Commercial Code (Ill.Rev.Stat. 1991, ch. 26, par. 2-725), the 47 plaintiffs named in Walsh had six months to bring suit in Illinois following dismissal by the federal district court. Because the instant complaint was not filed until one year after the dismissal of Walsh, the circuit court ruled that the claims of the 47 Walsh plaintiffs were also untimely. The appellate court affirmed the circuit court's dismissal of the complaint. Portwood v. Ford Motor Co., 292 Ill.App. 3d 478, 226 Ill. Dec. 486, 685 N.E.2d 941 (1997). We granted leave to appeal, and now affirm.

ANALYSIS

I. Cross-Jurisdictional Class Action Tolling

[1] In American Pipe & Construction Co. v. Utah, 414 U.S. 538, 94 S.Ct. 756, 38 L.Ed. 2d 713 (1974), the United States Supreme Court held that the filing of a class action in federal district court tolls the running of the statute of limitations for all purported members of the class who make timely motions to intervene after the court has found the suit inappropriate for class action status. American Pipe, 414 U.S. at 553, 94 S.Ct. at 766, 38 L.Ed. 2d at 726. This court subsequently adopted the American Pipe rule for class actions filed in Illinois state court. Steinberg v. Chicago Medical School, 69 Ill. 2d 320, 342, 13 Ill. Dec. 699, 371 N.E.2d 634 (1977). The Supreme Court then extended American Pipe by holding that the filing of a class action in federal district court tolls the statute of limitations not just for those who move to intervene in the original suit after class status is denied, but also for those who subsequently file their own individual suits in federal court. Crown, Cork & Seal Co. v. Parker, 462 U.S. 345, 350, 103 S.Ct. 2392, 2395-96, 76 L.Ed. 2d 628, 633 (1983).

[2] The five instant plaintiffs who were not named as parties in the prior federal suit urge this court to apply the holding of Crown, Cork to toll the Illinois statute of limitations during the pendency in federal court of a complaint seeking class certification. These plaintiffs argue that when a federal court denied class certification, the tolling principle of Crown, Cork should apply to all purported class members who subsequently file individual suits, regardless of whether they file in federal or state court.

Statutes of limitation rest upon the premise that the right to be free of stale claims in time comes to prevail over the right to prosecute them. Golla v. General Motors Corp., 167 Ill.2d 353, 369, 212 Ill. Dec. 549, 657 N.E.2d 894 (1995). Limitation periods are designed to encourage claimants to pursue causes of action before memories have faded, witnesses have died or disappeared, and evidence has been

lost. Chase Securities Corp. v. Donaldson, 325 U.S. 304, 314, 65 S.Ct. 1137, 1142, 89 L.Ed. 1628, 1635 (1945). Statutes of limitation thus promote predictability and finality. Golla, 167 Ill.2d at 370, 212 Ill. Dec. 549, 657 N.E.2d 894.

In American Pipe, the United States Supreme Court reasoned that tolling the statute of limitations for all purported class members upon the filing of a class action complaint would best promote the purposes of the class action procedure, which are efficiency and economy of litigation. American Pipe, 414 U.S. at 553-54, 94 S.Ct. at 766, 38 L.Ed. 2d at 726-27. Without such a tolling rule, the Court explained, class members not named in the original complaint would feel *1104 compelled to file motions to intervene in the action before the expiration of the limitation period in order to prevent loss of their claims in the event class status was ultimately denied after the limitation deadline. American Pipe, 414 U.S. at 553, 94 S.Ct. at 766, 38 L.Ed. 2d at 726. The Court asserted that such "protective" filings would be unnecessarily duplicative and thus detrimental to the class action's goal of litigative efficiency. American Pipe, 414 U.S. at 553-54, 94 S.Ct. at 766, 38 L.Ed. 2d at 726-27. Similarly, in Crown, Cork, the Court reasoned that tolling the statute of limitations for purported class members who file separate, individual suits after the denial of class status was likewise essential to prevent needless "protective" filings of such suits during the pendency of the class action complaint. Crown, Cork, 462 U.S. at 350-51, 103 S.Ct. at 2396, 76 L.Ed. 2d at 634.

Plaintiffs concede that both American Pipe and Crown, Cork concerned individual suits filed in federal court after denial of class certification in federal court. Plaintiffs nevertheless contend that the tolling principles of those cases are applicable as well to individual suits filed in Illinois state court after denial of class certification in federal court. We disagree.

Tolling the statute of limitations for individual actions filed after the dismissal of a class action is sound policy when both actions are brought in the same court system. In such instances, failing to suspend the limitation period would burden the subject court system with the protective filings described by the Supreme Court in American Pipe and Crown, Cork. American Pipe, 414 U.S. at 553-54, 94 S.Ct. at 766, 38 L.Ed. 2d at 726-27; Crown, Cork, 462 U.S. at 350-51, 103 S.Ct. at 2396, 76 L.Ed. 2d at 634. Tolling the statute of limitations for purported class members who file individual suits within the same court system after class status is denied therefore serves to reduce the total number of filings within that system.

Tolling a state statute of limitations during the pendency of a federal class action, however, may actually increase the burden on that state's court system, because plaintiffs from across the country may elect to file a subsequent suit in that state solely to take advantage of the generous tolling rule. Unless all states simultaneously adopt the rule of cross-jurisdictional class action tolling, any state which independently does so will invite into its courts a disproportionate share of suits which the federal courts have refused to certify as class actions after the statute of limitations has run. Although plaintiffs assert that the majority of courts which have considered this issue have chosen to adopt cross-jurisdictional tolling to preserve claims under sate law, our research indicates precisely the opposite. See Barela v. Showa Denko, K.K., 1996 WL 316544 (D.N.M. 1996) (concluding that class action brought in another jurisdiction does not toll New Mexico statute of limitations); Bell v. Showa Denko, K.K., 899 S.W.2d 749, 757 (Tex. Ct. App. 1995) (holding that pendency of federal class action does not toll Texas statute of limitations); In re Agent Orange Product Liability Litigation, 818 F.2d 210, 213 (2d Cir. 1987) (holding that Hawaii statute of limitations is not tolled by

pendency of federal class action); but see Lee v. Grand Rapids Board of Education, 148 Mich. App. 364, 369-70, 384 N.W.2d 165, 168 (1986) (holding that Michigan state claims were preserved by prior federal suit). At any rate, it is apparent that very few states to date have even considered the issue of cross-jurisdictional tolling, let alone adopted it. Given this state of affairs, it is clear that adoption of cross-jurisdictional class tolling in Illinois would encourage plaintiffs from across the country to bring suit here following dismissal of their class actions in federal court. We refuse to expose the Illinois court system to such forum shopping.

Furthermore, because state courts have no control over the work of the federal judiciary, we believe it would be unwise to adopt a policy basing the length of Illinois limitation periods on the federal courts' disposition of suits seeking class certification. State courts should not be required to entertain stale claims simply because the controlling statute of limitations expired while a federal court considered whether to certify a class action.

Our concerns with forum shopping and with the delay occasioned by the pendency of a class action in federal court are well illustrated *1105 by the instant case. Most of the current plaintiffs originally filed suit against defendant in federal court in Washington, D.C., in 1981. After numerous orders and appeals, that suit was finally dismissed in March of 1990. Plaintiffs thereafter brought two similar suits, one in the local courts of the District of Columbia and the other in Pennsylvania state court. Each of those suits was also dismissed. The fourth incarnation of this action in Illinois thus follows three unsuccessful forays by plaintiffs elsewhere, spanning a period now approaching two decades.

Plaintiffs contend that our rejection of cross-jurisdictional tolling will necessitate numerous protective filings in Illinois by plaintiffs who have class actions pending in other

jurisdictions, thus burdening our state court system and inconveniencing the affected litigants. We are convinced, however, that any potential increase in filings occasioned by our decision today would be far exceeded by the number of new suits that would be brought in Illinois were we to adopt the generous tolling rule advocated by plaintiffs. By rejecting cross-jurisdictional tolling, we ensure that the protective filings predicted by plaintiffs will be dispersed throughout the country rather than concentrated in Illinois.

Furthermore, early filings in state court by plaintiffs who are pursuing a class action elsewhere would not be entirely undesirable, as such filings would put that state's court system on notice of the potential claim. If necessary, the state suit could be stayed pending proceedings elsewhere. Certainly, the instant plaintiffs would be much better off if they had instituted such a protective filing years ago in an appropriate jurisdiction.

For all of these reasons, we affirm the circuit and appellate courts' holding that the Illinois statute of limitations is not tolled during the pendency of a class action in federal court. [FN1]

FN1. Plaintiffs also challenge the circuit court's ruling that, regardless of any individual claims, the dismissal of a class action does not toll the statute of limitations for refiling of the suit as a class action. We find it unnecessary to address this issue, however, because the failure of plaintiffs' individual claims necessarily defeats their class claims as well. Landesman v. General Motors Corp., 71 Ill. 2d 44, 18 Ill. Dec. 328, 377 N.E.2d 813 (1978).

II. Applicable Savings Provision

[3] Next, the 47 plaintiffs in the instant case who were also named as plaintiffs in the prior federal litigation contend that the circuit and appellate courts erred in holding that the complaint herein was untimely filed. These plaintiffs argue that the lower courts erroneously applied section 2-725(3) of the Uniform Commercial Code (Ill.Rev.Stat. 1991, ch. 26, par. 2-725(3)) rather than section 13-217 of the Code of Civil Procedure (Ill.Rev.Stat. 1991, ch. 110, par. 13-217) in calculating the time allowed for refiling this action after it was dismissed in federal court.

Section 2-725 of the Uniform Commercial Code provides, in relevant part, as follows:

> "(1) An action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued.
>
> * * *
>
> (3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action***." Ill.Rev.Stat. 1991, ch. 26, par. 2-725.

In contrast, section 13-217 of the Code of Civil Procedure provides as follows:

> "In the actions specified in Article XIII of this Act or any other act or contract where the time for commencing an action is limited, if *** the action is dismissed by a United States District Court for lack of jurisdiction, then whether or not the time limitation for bringing such action expires during the pendency of such action, the plaintiff, his or her heirs, executors or administrators may commence a new action within one year or within the remaining period of limitation, whichever is greater ***." Ill.Rev.Stat. 1991, ch. 110, par. 13-217.

*1106 Plaintiffs contend that because section 13-217 of the Code of Civil Procedure applies to "any *** act *** where the time for commencing an action is limited," its one-year savings period takes precedence over that contained in section 2-725(3) of the Uniform Commercial Code. We disagree.

Where there are two statutory provisions, one of which is general and designed to apply to cases generally, and the other particular and relating to only one subject, the particular provision must prevail. Hernon v. E.W. Corrigan Construction Co., 149 Ill. 2d 190, 195, 172 Ill. Dec. 200, 595 N.E.2d 561 (1992). Section 13-217 of the Code of Civil Procedure explicitly governs a wide variety of actions, both real and personal. Conversely, UCC section 2-725(3) governs only actions for breach of contracts for sale. As the more specific provision, section 2-725(3) controls the instant case.

In addition to the specificity of the provision, another compelling reason to apply section 2-725(3) herein is to maintain the interjurisdictional uniformity sought by the Uniform Commercial Code. Section 2-725 was written "[t]o introduce a uniform statute of limitations for sales contracts, thus eliminating the jurisdictional variations and providing needed relief for concerns doing business on a nationwide scale." 810 ILCS Ann. 5/2-725, Uniform Commercial Code Comment, at 499 (1993). Failure to apply the explicit language of section 2-725(3) in this instance would defeat this goal of uniformity.

Plaintiffs cite a number of cases ostensibly supporting the priority of section 13-217 of the Code of Civil Procedure. See Limer v. Lyman, 241 Ill.App. 3d 125, 181 Ill. Dec. 667, 608 N.E.2d 918 (1993); Roth v. Northern Assurance Co., 32 Ill. 2d 40, 203 N.E.2d 415 (1964); Bethlehem Steel Corp. v. Chicago Eastern Corp., 863 F.2d 508 (7th Cir. 1988). Unlike the instant case, however, none of the cited cases

involved two conflicting savings provisions, and we therefore deem the cases inapplicable.

For these reasons, we conclude that the circuit and appellate courts did not err in holding that those plaintiffs who participated in the prior federal litigation of this matter failed to timely file their complaint in Illinois pursuant to section 2-725(3) of the Uniform Commercial Code.

CONCLUSION

For the reasons stated, we affirm the judgment of the appellate court, affirming the circuit court's dismissal of the instant complaint as untimely filed.

Affirmed.

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SUPREME COURT OF THE UNITED STATES
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WILLIAM K. SUTER
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December 23, 1998

Mr. Clinton Krislov
222 North La Salle
Suite 2120
Chicago, IL 60601-1086

Re: Gwendolyn Portwood, et al.
v. Ford Motor Company
Application No. A-517

Dear Mr. Krislov:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on December 23, 1998, extended the time to and including January 27, 1999.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By Signed

Sandra Elliott Spagnolo
Assistant Clerk